TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 387.

CHARLES F. W. NEELY, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 16, 1900.

(17,872.)

(17,872.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 387.

CHARLES F. W. NEELY, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Petition for writ of *habeas corpus*	1	1
Exhibit A—Affidavit of Ernest W. Baldwin, June 28, 1900	17	8
B—Affidavit of Ernest W. Baldwin, June 28, 1900	20	9
C—Warrant of arrest	23	10
D—Warrant of arrest	25	11
E—Opinion of Lacombe, J	27	12
F—Act amending section 5270 of the Revised Statutes	34	15
Order denying petition	38	17
Order remanding petitioner	40	18
Notice of appeal	42	18
Petition of appeal	44	19
Allowance of appeal	45	20
Bond for costs on appeal	47	20
Assignment of errors	51	23
Citation on appeal	55	25
Clerk's certificate	57	25

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 30, 1900.

1 To the circuit court of the United States in and for the southern district of New York, in the second judicial circuit:

The petition of Charles F. W. Neely, by John D. Lindsay, his attorney and counsel, respectfully shows:

I. That your petitioner is a native-born citizen of the United States, an inhabitant and citizen of the State of Indiana, and a resident of the city of Muncie, in the said last-mentioned State.

II. That your petitioner is not enlisted or commissioned in the military service of the United States and is not subject to the articles of war or the rules or regulations of the United States Army, but is a civilian and in no manner, directly or indirectly, amenable to the disciplinary or other power or jurisdiction of the military branch of the United States Government.

III. That your petitioner is now actually imprisoned and restrained of his liberty and detained, by color of the authority of the United States, in the custody of William Henkel, Esquire, the United States marshal in and for the southern district of New York, to wit, at the borough of Manhattan of the city of New York, in the said district, under the following circumstances:

1. On or about the 28th day of June, 1900, at the borough of
2 Manhattan of the city of New York, in the southern district of New York, Ernest E. Baldwin, Esquire, then and yet being assistant United States attorney in and for the district aforesaid, appeared before the Honorable E. Henry Lacombe, circuit judge of the United States in and for the second circuit, and laid before the said circuit judge two certain complaints in writing and upon oath, copies of which are hereto annexed, marked "A" and "B" respectively.

2. Thereupon, to wit, on the same said last-mentioned day, the said circuit judge issued two certain warrants for your petitioner's arrest, copies of which are hereto annexed, marked "C" and "D" respectively.

3. Thereafter and on the 29th day of June, 1900, your petitioner was arrested and taken into custody and brought before the said circuit judge, at the United States courts and post-office building, in said borough, by the said United States marshal under color and by pretence of the authority of the said warrants.

4. Thereupon, to wit, on the said 29th day of June, 1900, at the borough aforesaid, your petitioner being represented before the said circuit judge by counsel, Henry L. Burnett, Esquire, United States attorney for the district aforesaid; the said Ernest E. Baldwin, Esquire, assistant United States attorney, as aforesaid, and Edward K. Jones, Esquire, special attorney general of the United States, appeared before the said circuit judge and made an application to the said circuit judge for your petitioner's extradition to Cuba under the said complaints; whereupon counsel for your petitioner moved for a dismissal of the said complaints upon
3 various grounds, and among others:

First. That the act of Congress hereinafter referred to, being

the act upon which the said proceedings were based, was unconstitutional and void and conferred no jurisdiction upon the said circuit judge; that there was no power in Congress, under the Constitution of the United States, authorizing the enactment of the said measure, and that the same was not a necessary or appropriate instrumentality for carrying into effect or executing any of the known powers of Congress; that the said act, if applicable to the defendant and to the situation set forth in the said complaints, would enable an American citizen to be subjected to the jurisdiction of a military government maintained by the President of the United States in friendly foreign territory in time of absolute peace, no authority for which military government exists or can exist under the Constitution of the United States, and that the said act sought to aid the military branch of the United States Government in the maintenance and execution of an illegal and unwarranted usurpation of the sovereignty of the Cuban people.

Second. That neither of the said complaints charged your petitioner with having committed an offense against any law in force in foreign territory lawfully occupied by or under the control of the United States.

5. The said motion was denied; whereupon the United States attorney offered in evidence in support of the said complaints
4 certain depositions taken in Cuba, as evidence tending to establish probable cause that your petitioner was guilty of the supposed offenses set forth in the said complaints.

6. The proceedings were thereupon adjourned to the 23rd day of July, 1900, when certain oral evidence was introduced by the Government. Further evidence for the Government, and also on the part of the defendant, was introduced on the 24th day of July, and the case was on that day submitted to the circuit judge for his decision.

7. That the circuit judge, having deemed the evidence adduced before him sufficient to establish probable cause that your petitioner was guilty of the matters set forth in the said complaints, thereafter, to wit, on the 8th day of August, 1900, handed down an opinion, a copy of which is hereto annexed, marked "E," and that your petitioner is now actually imprisoned and restrained of his liberty by the said William Henkel, Esquire, United States marshal, as aforesaid, in the said proceeding, claiming to so restrain your petitioner by color of the pretended authority of the said warrants of arrest.

IV. That the proceedings above described were instituted, prosecuted, and maintained, and your petitioner's present imprisonment, restraint, and retention under the said warrants are solely under color and pretense of the authority assumed to have been conferred in the premises by a certain act of Congress of June 6th, 1900, entitled "An act amending section 5270 of the Revised Statutes of the United States," a copy of which is hereto annexed, marked "F."

V. That at the time of the alleged commission of the offence charged in the said complaint, and at all times prior to the passage of the said act of Congress, there was no authority under the Constitution

and laws of the United States for the extradition by the
5 United States of persons charged with offences committed in a foreign territory or at any place without the territorial jurisdiction of the United States, except in pursuance of treaty stipulations duly entered into for that purpose.

VI. That, as your petitionor is advised by counsel and verily believes, the said act of Congress of June 6th, 1900, is in all respects, and especially in so far as it undertakes to afford a means of surrendering to the authorities now in control of the island of Cuba, for trial under the laws there in force, persons who shall violate or who have violated the criminal laws in force there by the commission of the offenses therein enumerated, or any offense violative of the Constitution of the United States, and utterly void and ineffective and conferred no authority upon the circuit judge to entertain the extradition proceedings which resulted in your petitioner's arrest and commitment, as aforesaid, and that your petitioner's arrest and detention in the said proceedings thereunder are without any authority of law whatsoever and in violation of his rights, privileges, and immunities under the Constitution and laws of the United States for the following reasons:

6 1. That the people of the island of Cuba are and at all times since the month of April, 1898, have been free and independant, and that the said island is a foreign country, regarding whose government or affairs Congress cannot competently legislate and in whose internal affairs the United States cannot lawfully interfere.

2. That by the joint resolution of Congress adopted April 19th, 1898, and approved by the President the following day, the political branch of the Government of the United States found and determined as matter of fact that the Cubans had a government of their own, capable of performing the duties and discharging the functions of an independant nation and having all the forms and attributes of nationality, entitling it to its place in the great family of nations, and that said finding and determination of fact *is* absolutely binding and conclusive upon the judicial branch of the Government.

3. That the status of Cuba and of the people of Cuba as a free and independent nation has at all times since the adoption and approval of the said joint resolution remained and yet does remain unchanged.

4. That at the time of the adoption and approval of the said resolution a state of war existed between the people of the island of Cuba and the government of the Kingdom of Spain; various portions of the territory of the Cuban people were invaded by the Spanish forces, and certain parts thereof were occupied and
7 controlled by such invading forces, and that by the adoption and approval of said joint resolution and upon the adoption and approval of the same the United States became the friendly ally of the Cuban people in its said war with Spain, and throughout the ensuing hostilities and until the termination of the said war the allied forces of the Cuban people and of the United States jointly waged war against the government of the Kingdom of Spain.

5. That the said war had been wholly terminated and was at an

end on or about the 1st day of January, 1899, at which time all the invading Spanish forces had evacuated the island of Cuba.

6. That at no time since the 1st day of January, 1899, has there existed a state of war between the Government of the United States and the Kingdom of Spain; that there has never existed a state of war between the United States and the Cuban people, but, on the contrary, the United States and the Cuban people have at all times during the existence of the latter as an independent nation been on terms of perfect peace and amity.

7. That during the latter part of the said war and until peace was established a part of the Army of the United States, consisting of several thousand officers and soldiers, was stationed in Cuba, and, in co-operation with the army of the Cuban people, conducted in the said island various military operations in the prosecution of the war and for its successful conclusion.

8 8. That on the 13th day of December, 1898, the Secretary of War of the United States made and issued an order wherein and whereby, by direction of the President, a division to be known as the division of Cuba, consisting of the geographical department and provinces of the said island of Cuba, with headquarters in the city of Havana, was created under command of a major general of the United States Army, who, in addition to command of the United States troops in the said division, was by the said order directed to exercise the authority of military governor of the said island.

9. That when the said war was at an end and the island of Cuba pacified and actual peace existed there, the said military forces of the United States being still stationed in Cuba, the President of the United States, as the Commander-in-chief of the Army of the United States, instead of withdrawing the army from the said island and leaving the government and control thereof to the Cuban people, kept and continued the army and yet does keep and continue it there.

10. That thereupon the President, as such commander-in-chief, set up and established in the said island a military form of government, to wit, a government thereof by martial rule, and at all times since the said 1st day of January has there maintained and yet does maintain such military government of the island of Cuba and over the affairs of the Cuban people, thereby usurping and entirely suspending the government and control of the island by its people and substituting in its place martial rule.

9 11. That at all times since the said 1st day of January, 1899, the President of the United States has maintained such martial rule in Cuba and throughout the territory of that island through a military governor appointed by him and by force of the army under his command.

12. That the said military governor assumes to exercise and has ever since the said 1st day of January, 1899, actually exercised absolute executive, legislative, and judicial power over the affairs of the island of Cuba and over the Cuban people and rules the same by his sole and uncontrolled will, subject to no superior authority save that

of the President of the United States as Commander-in-chief of the United States Army.

13. That in the exercise of such martial rule the military governor has taken into his hands and has subjected and now subjects to his absolute authority all the departments of government in that island. He assumes and actually exercises absolute power and authority, not only over the persons and property of the citizens of Cuba, but over the persons and property of all persons in the island there resident or who were sojourners and whether citizens of Cuba or of the United States or of any other nation, to the same extent as though Cuba were a hostile foreign territory in the military occupation of the United States in time of war and the United States were an invader or conqueror of territory belonging to an
10 enemy nation. He assumes to enact, modify, amend, or repeal laws, establish, reorganize, or abolish courts, civil and criminal; adopt or change rules of judicial procedure, and in general to deal with the administration of justice in the island as he sees fit.

14. That on the said 1st day of January the said military governor published a proclamation addressed "To the people of Cuba," wherein and whereby he declared (among other things) that the civil and criminal code which prevailed in Cuba prior to the relinquishment of Spanish sovereignty would remain in force, with such modifications and changes as might from time to time be found necessary in the interest of good government.

15. That on the 11th day of January, 1899, he issued a military edict or order, whereby he ordered that thereafter the civil government of Cuba should be administered by four departments, to be known as the department of state and government, the department of finance, the department of justice and public instruction, and the department of agriculture, commerce, industries, and public works, each under the charge of a secretary, and on the following day he caused to be published an announcement of the appointment by him of secretaries of such departments.

11 16. That on the 14th day of April, 1899, he caused to be published a military order creating a supreme court, with jurisdiction throughout Cuban territory, composed of a president or chief justice, six associate justices, one fiscal, two assistant fiscals, one secretary or chief clerk, two deputy clerks, and other subordinate employees, with administrative functions as well as those of a court of justice in civil and criminal matters.

17. That by article XXXVII of the same order he declared that to be eligible for appointment to the office of president, justice, fiscal, assistant fiscal, or deputy clerk of the supreme court the person must (among other things) be a Cuban or declare on oath that he accepts Cuban citizenship, provided he be a person included within the provisions of article 9 of the "treaty of Paris of December 10th, 1898."

18. That on the 15th day of June, 1899, he issued a military edict or order whereby he declared that thereafter the "audiencias" of the island of Cuba should be organized and should exercise jurisdiction

in accordance with the provisions of the said last-mentioned edict or order.

19. That by article XLI of the same order he declared article XXXVII (before mentioned) of the order creating the supreme court applicable to the functionaries of the "audiencia."

20. That the supreme court, the "audiencias," and certain tribunals called "courts of first instance" are at present the only
12 courts in Cuba exercising or assuming criminal jurisdiction; that all of said courts are at present organized, controlled, and operated by the military governor, who assumes power to appoint, suspend, and remove their members, officers, and employees at his pleasure.

21. That said courts act as the mere agent and instruments of the military governor and are wholly dependent for their existence and continuance upon his will.

22. That under the military system now in force there is no means of trying offenders against the laws in force in Cuba (if any there be) except through the instrumentality of said courts or such other courts as the military governor may see fit to erect.

23. That there is no authority in the Constitution of the United States for the occupation or control by the United States of the territory of a friendly foreign nation or for the government of such foreign territory by the United States by martial law or otherwise in time of peace, and that the form of government now maintained by the United States in Cuba is wholly illegal and without authority under the Constitution of the United States.

24. That there is no authority in the Constitution of the United States for the exercise by the United States military authorities through the President, as commander-in-chief or otherwise, of jurisdiction over United States citizens who are civilians and not commissioned or enlisted in the military service, even in time of
13 war, except in hostile territory in the forcible military occupation of the United States forces, and that in time of peace neither martial law nor military jurisdiction of any kind can lawfully be employed or exercised as against civilian citizens even in the United States, much less in friendly foreign territory.

25. That the said act of Congress of June 6th, 1900, is therefore unconstitutional and void, in that—

(*a.*) There is no authority in the Constitution for its enactment by Congress, the legislative power granted to Congress by the Constitution not extending to the enactment of any such measure.

(*b.*) It seeks to aid the President of the United States and the military governor appointed by him in the maintenance in foreign territory, in time of peace, of an unlawful and unauthorized military jurisdiction.

(*c.*) It seeks to give legal countenance and support to an unwarranted and unjustifiable invasion by the United States military forces of the territory of a friendly foreign power and the wrongful usurpation of the functions of sovereignty belonging to such foreign nation.

(*d*.) It seeks to subject American citizens who are civilians and not in the military service to martial rule in time of peace.

XI. That the said act of Congress conferred no jurisdiction upon the circuit judge to entertain the extradition proceedings
14 herein or to issue the warrants aforesaid; that the said warrants were issued without legal right, authority, or jurisdiction of any kind and are utterly void and ineffectual, and that your petitioner's arrest, detention, and imprisonment thereunder are in violation of the Constitution of the United States and in violation of his rights, privileges, and immunities thereunder.

XII. That prior to the institution of the extradition proceedings aforesaid your petitioner was arrested and taken into custody under an order of arrest issued by the said the Honorable E. Henry Lacombe in a civil action brought by the United States for the recovery of certain moneys alleged to have been wrongfully converted by the petitioner, and that the petitioner is now detained and in the custody of the said marshal under and by virtue of the said order of arrest as well as under color of the authority of the warrants aforesaid in the said extradition proceeding.

Wherefore your petitioner prays that a writ of *habeas corpus* may issue, directed to the said William Henkel, marshal, or to any of his deputies, requiring him or them to bring and have your petitioner before this court at a time to be by it determined, together with the true cause of his detention, to the end that an inquiry may be had into the cause of the restraint of your petitioner in the said extradition proceedings, and that this court may
15 proceed in a summary way to determine the facts of the case in that regard, and the question of the constitutionality of the act under which the said warrants were issued, and the legality of the imprisonment, restraint, and detention thereunder, now imposed upon him, and thereupon to dispose of your petitioner as law and justice require.

And your petitioner will ever pray.

Dated the 9th day of August, 1900.

CHARLES F. W. NEELY, *Petitioner*,
By JNO. D. LINDSAY,
One of His Attorneys and of Counsel.

NICOLL, ANABLE & LINDSAY,
Attorneys for Petitioner, 31 *Nassau Street, New York City.*

CITY AND COUNTY OF NEW YORK, }
Southern District of New York, } ss.:

John D. Lindsay, being duly sworn, says that he is the attorney for the petitioner named in the foregoing petition; that he has read the said petition, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true, and that he makes this application at the request of the petitioner, who is unable to appear and make the same in person.

JNO. D. LINDSAY.

16 Sworn to before me this 9th day of August, 1900.
WM. J. WALLACE,
U. S. Circuit Judge.

17 EXHIBIT "A."

Before Honorable E. Henry Lacombe, judge of the circuit court, southern district of New York.

In the Matter of the Application for the Extradition of CHARLES F. W. NEELY, Finance Officer of the Department of Posts, Cuba, Charged with Embezzlement and Malversation in Office under Article 401 of the Laws of Cuba, Pursuant to an Act of Congress Amendatory of Sec. 5270, R. S., Approved June 6, 1900.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Ernest W. Baldwin, assistant United States attorney in and for said district, being duly sworn, deposes and says upon information and belief:

First. That one Charles F. W. Neely, being then and there a public employee, to wit, finance agent of the department of posts in the city of Havana, island of Cuba, on the 6th day of May, in the year of our Lord nineteen hundred, or about that time, having then and there charge of the collection and deposit of moneys of the department of posts of the city of Havana aforesaid, did unlawfully and feloniously take and embezzle from the public funds of the
18 said island of Cuba the sum of ten thousand dollars and more, being moneys and funds which then and there had come into his charge and under his control in his capacity as such public employee and finance agent, as aforesaid, and by reason of his said office and employment, thereby violating chpater X, article 401, of the penal code which was then and there and which is now in force in the said island of Cuba.

Second. That the said Charles F. W. Neely is a fugitive from justice from the said island of Cuba and is now within the territory of the United States of America, to wit, in the city of New York, in the southern district of New York.

Third. That the crime of which the said Charles F. W. Neely has so as aforesaid been guilty is an offense within the meaning of an act of Congress entitled "An act amending section fifty-two hundred and seventy of the Revised Statutes of the United States," approved June 6th, 1900, to wit, that part of said act of Congress relating to the "embezzlement or criminal malversation of the public funds committed by public officers, employees, or depositaries."

Fourth. That the said island of Cuba is a foreign country occupied by and under the control of the United States.

Fifth. That the said Charles F. W. Neely, as deponent is informed and believes, was indicted for the crime of embezzlement of public funds in the said city of Havana on the said 6th day of May,

1900, an order being then and there regularly and duly en-
19 tered to that effect by the judge of the court of the first instance and instruction of the cathedral district of the said city of Havana; that the judge of the said court thereupon decreed that the said Charles F. W. Neely should be arrested and that proper request should be made for his extradition. Whereupon Leonard Wood, major general United States volunteers, military governor of Cuba, under his hand and seal of the military government of the said island of Cuba, on the 13th day of June, 1900, issued his requisition for such extradition to his Excellency the President of the United States.

Sixth. That deponent's information and belief are based upon the said requisition and the proofs and papers attached to and accompanying the same.

ERNEST E. BALDWIN.

Subscribed and sworn to before me this 28th day of June, A. D. 1900.

E. HENRY LACOMBE,
Circuit Judge.

20 EXHIBIT "B."

Before Honorable E. Henry Lacombe, judge of the circuit court, southern district of New York.

In the Matter of the Application for the Extradition of CHARLES F. W. NEELY, Employed in a Branch of the Department of Posts, Cuba, Charged with Embezzlement and Conversion of Postage Stamps, Moneys, etc., under Sections 37 & 55 of the Postal Code for the Island of Cuba.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Ernest E. Baldwin, assistant United States attorney in and for said district, being duly sworn, deposes and says upon information and belief:

First. That one Charles F. W. Neely, at the times hereinafter mentioned, being then and there employed in and connected with the business and operations of a branch of the service of the department of posts, to wit, in the city of Havana, island of Cuba, did unlawfully and fraudulently, between the dates of July 1st, 1899, and May 1st, 1900, embezzle and convert to his own use postage stamps, money, funds, and property belonging to or in the custody of the department of posts of Cuba, which had come into his posses-
21 sion and under his control in the execution of his said employment and service and under color and claim of authority as such employee—that is to say, to the amount and value of more than fifty-seven thousand dollars in gold of the United States currency, in violations of section 37 and 55 of the postal code of the said island of Cuba.

Second. That the said Charles F. W. Neely is a fugitive from justice from the said island of Cuba and is now within the territory of the United States of America, to wit, in the city of New York, in the southern district of New York.

Third. That the crime of which the said Charles F. W. Neely has so, as aforesaid, been guilty is an offense within the meaning of an act of Congress entitled "An act amending section fifty-two hundred and seventy of the Revised Statutes of the United States," approved June 6th, 1900, to wit, that part of said act of Congress relating to the "embezzlement or criminal malversation of public funds committed by public employees."

Fourth. That the said island of Cuba is a foreign country occupied by and under the control of the United States.

Fifth. That the said Charles F. W. Neely, as deponent is informed and believes, was indicted for the crime of malversation of public funds confided to him by reason of his employment, as aforesaid, and was so declared to be indicted on the 18th day of May, A. D. 1900, in the said city of Havana, an order being then and there regularly and duly entered to that effect by the judge of the
22 court of first instance and instruction of the district of the cathedral of said city of Havana, said indictment being based upon the declarations under oath of George L. Seybolt, acting chief special agent of the department of posts aforesaid, and of Harry H. Williams, special agent thereof, and a proper request has been made for the extradition of said Charles F. W. Neely, bearing date the said 18th day of May, 1900, in order that the said Charles F. W. Neely may be brought to trial before the proper courts of said island for the crime of which he stands accused, the said request for extradition being signed by Leonard Wood, military governor of Cuba, under his hand and the seal of the military government of the said island of Cuba, and being addressed to his excellency the Honorable William McKinley, President and Chief Magistrate of the United States of America.

Sixth. That deponent's information and belief are based upon the said requisition and the proofs and papers attached to and accompanying the same.

ERNEST E. BALDWIN.

Subscribed and sworn to before me this 28th day of June, A. D. 1900.

E. HENRY LACOMBE,
Circuit Judge.

23 EXHIBIT "C."

Warrant of Arrest.

The President of the United States of America to the marshal of the United States for the southern district of New York, his deputies or either of them:

Whereas complaint has been made on oath under the provisions of the act of Congress approved June 6th, 1900, entitled "An act

amending section fifty-two hundred and seventy of the Revised Statutes of the United States," before me, E. Henry Lacombe, a judge of the circuit court of the United States in and for said district, duly authorized by law, that one Charles F. W. Neely, being then and there a public employee, to wit, finance agent of the department of posts in the city of Havana, island of Cuba, on the 6th day of May, in the year of our Lord one thousand nine hundred, or about that time, having then and there charge of the collection and deposit of moneys of the department of posts of the said city of Havana, did unlawfully and feloniously take and embezzle from the public funds of the said island of Cuba the sum of ten thousand dollars and more, being then and there moneys and funds which had come into his charge and under his control in his capacity as such public employee and finance agent, as aforesaid, and by reason of his said office and employment, thereby violating chapter 10, article 401, of the penal code of the said island of Cuba—that is to say, a crime within the meaning of the said act of Congress approved
24 June 6th, 1900, as aforesaid, relating to the "embezzlement or criminal malversation of the public funds committed by public officers, employees, or depositaries"—as will more fully appear by a reference to the said complaint:

Now, therefore, we command you forthwith to take him, the said Charles F. W. Neely, and bring him before me, the said judge, in order that the evidence of probable cause as to the guilt of the said Charles F. W. Neely of the offense charged against him may be heard and considered, and, if deemed sufficient, that the same may be certified, with a copy of all the proceedings, to the Secretary of State, that an order may issue for the return and surrender of the said Charles F. W. Neely pursuant to the authority of the said act of Congress.

Witness my hand and the seal of the said circuit court this 28th day of June, 1900.

E. HENRY LACOMBE,
Circuit Judge.

25 EXHIBIT "D."

Warrant of Arrest.

The President of the United States of America to the marshal of the United States for the southern district of New York, his deputies or either of them:

Whereas complaint has been made on oath under the provisions of the act of Congress approved June 6th, 1900, entitled "An act amending section fifty-two hundred and seventy of the Revised Statutes of the United States," before me, E. Henry Lacombe, a judge of the circuit court of the United States in and for said district, duly authorized by said act of Congress, that one Charles F. W. Neely, being then and there employed in and connected with the business and operations of a branch of the service of the department of posts, to wit, in the city of Havana, island of Cuba, between the dates of

July 1, 1899, and May 1, 1900, while so employed, did unlawfully and fraudulently embezzle and convert to his own use postage stamps, moneys, funds, and property belonging to or in the custody of the department of posts of Cuba, which had come into his possession and under his control in the execution of his said employment and service and under color and claim of his authority as such employee—that is to say, to the amount and value of more than fifty-seven thousand dollars in gold of the United States currency—in violation of sections 37 and 55 of the postal code
26 of the said island of Cuba—that is to say, a crime within the meaning of the said act of Congress approved June 6th, 1900, as aforesaid, relating to the "embezzlement or criminal malversation of the public funds committed by public employees"—as will more fully and at large appear by reference to the said complaint:

Now, therefore, we command you forthwith to take him, the said Charles F. W. Neely, and bring him before me, the said judge, in order that the evidence of probable cause as to the guilt of the said Charles F. W. Neely of the offense charged against him may be heard and considered, and, if deemed sufficient, that the same may be certified, with a copy of all the proceedings, to the Secretary of State, that an order may issue for the return and surrender of said Charles F. W. Neely pursuant to the authority of the said act of Congress.

Witness my hand and the seal of the said circuit court this 28th day of June, 1900.

E. HENRY LACOMBE,
Circuit Judge.

27 "EXHIBIT E."

United States Circuit Court, Southern District of New York.

In the Matter of the Application for Extradition of CHARLES F. W. NEELY to Cuba.

LACOMBE, *Circuit Judge:*

The various preliminary objections have been disposed of in the former opinion. Upon the hearing, counsel for the prisoner offered to prove by witnesses that a fair and impartial trial cannot be secured to the prisoner in the island of Cuba. Reliance is placed upon the report of the Judiciary Committee of the Senate recommending the passage of the act of June 6th, 1900, the concluding paragraph of which reads as follows:

"In order that there may be no vexatious exercise of the power of extradition under this act, it is provided that there shall be shown probable cause before a judge of the appropriate court, who shall order the returns and surrender, but no such order shall be made until the judge shall be satisfied that the accused will have a speedy and fair trial."

If the statute had passed in the language recommended by the

Judiciary Committee there would be force in this argument,
28 but the history of the enactment is conclusive against the conducting of any such investigation by this court. When the bill came from the House of Representatives the concluding sentences read as follows:

"Provided further, that such proceedings shall be had before a judge or a justice of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged. If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authority shall guarantee to such person a fair and impartial trial."

The Judiciary Committee of the Senate reported in favor of "striking out all after the enacting clause" and substituting an enactment which should contain, *inter alia*, the following:

"Provided further, that before making such order of surrender and return the judge shall be satisfied that proper provision exists for securing to the accused a speedy and fair trial for such offense, where he will be informed of the nature and cause of the accusation, and be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense."

Congress, however, rejected this amendment proposed by the Judiciary Committee and passed the act in substantially the language above quoted from the House bill. Manifestly, therefore, this court should not enter upon the investigation proposed. Its sole
29 function is to determine whether there is probable cause that the prisoner is guilty of the offense charged, such offense being one of those enumerated in the act.

It will not be necessary to discuss the testimony covering the entire period of the prisoner's incumbency. Touching the six weeks from January 1st, 1900, to February 10th, 1900, the evidence is more compact and specific than it is for the other months.

It appears that Neely was the head of the bureau of finance in the department of posts of the island of Cuba. That bureau issued "stamped paper" (*i. e.*, stamps, postal cards, stamped envelopes, etc.) to the bonded postmasters of the island, upon their requisition, and received the remittances made by them to pay for the same. Such remittances came by registered mail, usually in the shape of drafts, warrants, cash, or money orders. The unbonded postmasters received stamps and paid cash. To the bonded postmasters there were sent receipts for their remittances, such receipts being torn out of a book containing stubs. Entries of such remittances were also made in a book called "Small Cash Book, Exhibit A." In this cash book were also entered the items of cash payments by unbonded postmasters. Deposits of these funds were made every ten days in the North American Trust Company, the payments accumulating meanwhile in the safe. When a deposit was made a deposit slip in the usual form was made out and turned in with the funds. Now, for the period from January 1st, 1900, to

February 10, 1900, we have the small cash book, Exhibit A,
30 showing receipts of money from postmasters. George W. Marshall, who has been employed in the bureau continuously since February, 1899, testified under oath before the court that every entry in the book for that period is in his own handwriting; that he knew of the transaction at the time, having himself prepared the receipt for the postmaster, which Neely signed, and that his entry was accurately made. It is, of course, possible that through error or oversight or otherwise other money may have been received and not entered, but that such amounts as are entered were received is sworn to positively by a witness having personal knowledge of the facts and is wholly uncontradicted. These items aggregate $38,967.29. The teller or clerk in charge at the North American Trust Company testified to the deposits made during the same period, and that none others than those he swore to were made during that period. He produced the original deposit slips. The witness Marshall, being shown these slips, went on the stand, identified them and swore that, except from a memorandum in Neely's handwriting on the slip of January 6th, 1900, they were entirely in his own handwriting and accurately represented the deposits made by him on the date given. They are as follows:

Jan. 6, 1900	4,000
" 10, 1900	3,000
" 20, 1900	5,700
" 30, 1900	4,830
Feb. 10, 1900	4,907.57
Total	$24,437.57

31 The difference between receipts and deposits is $14,529.72. Some slight discrepancy by difference of time between receipt and deposit on the same day is, of course, to be expected, but the evidence of Marshall, direct and positive, not contradicted or impeached or qualified or shaken on cross-examination, should satisfy any jury beyond reasonable doubt that $14,000, or thereabouts, of funds received from the sale of stamped paper was lost, stolen, or embezzled after it reached the bureau.

It further appears that Neely was in charge of the bureau and directed its business methods; that he himself opened the mail containing the money and either wrote the receipts himself or signed those which Marshall prepared and which were sent to postmasters; that he had constant access to the books and examined them; that he frequently—almost daily—looked over the accumulating funds in the safe, doing them up in bundles for convenience of counting and deposit; that he himself directed what should be the amount of each deposit after Marshall had reported how much loose silver there was in the drawer, and himself handed to Marshall sufficient currency or drafts to make up, with such loose silver, the amount he thus directed to be deposited; that, except for himself and Marshall (who had testified here to the correctness of his own transactions), there were changes in the personnel of the bureau,

but that, as its records show, there was a uniform deficiency of deposits as compared with receipts from the beginning of Neely's administration until he left the island on leave, April 28th,
32 1900. It is, of course, possible that, while he was himself opening the mail, receiving the money, signing the receipts, handling the funds, counting them, moving them from drawer to drawer of the safe, and making them up for deposit, others, in the bureau or out of it, could have made away during six weeks with $14,000—over 35 % of the total receipts—under his eyes and almost out of his hands, without his knowledge or consent, but it is highly improbable.

In the opinion of this court, the Government has abundantly shown that there is probable cause to believe that Neely is guilty of the offense of "embezzlement or criminal malversation of the public funds," he being at that time a "public officer" or "employee" or "depositary." Such an offense is obnoxious to the penal code in force in Cuba, article 401 of which provides that "the public employee who, by reason of his office, has in his charge public funds or property and who should take (or consent that others should take) any part therefrom, shall be punished, etc." There is no merit in the contention that this article applies only to persons in the public employ of Spain. Spain having withdrawn from the island, its successor has become the "public" to which the code, remaining unrepealed, now refers. The suggestion that under this penal code no public employee could be prosecuted or punished until his superior had heard the case and turned the off nder over to the criminal law for trial is matter of defense and need not be considered here. The evidence shows probable cause to
33 believe that the prisoner is guilty of an offense defined in the act of June 6th, 1900, and which is also a violation of the criminal laws in force in Cuba, and upon such evidence he will be held for extradition.

Two obstacles to his extradition now exist. He has been held to bail in this court upon a criminal charge of bringing into this district government funds embezzled in another district. He has also been arrested in a civil action brought in this court to recover $45,000, which, it is alleged, he has converted. When both of these proceedings shall have been discontinued the order in extradition will be signed. This may be done on August 13th, at 11 a. m.

34 EXHIBIT F.

An act amending section fifty-two hundred and seventy of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-two hundred and seventy of the Revised Statutes of the United States is hereby amended by adding thereto the following proviso:

"Provided, that whenever any foreign country or territory, or any part thereof is occupied by or under the control of the United

States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offences, namely: Murder and assault with intent to commit murder; counterfeiting or altering money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same; forgery or altering, and uttering what is forged or altered; embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries; larceny or embezzlement of an amount not less than one hundred dollars in value, burglary, defined to be the breaking and entering by night-time into the house of another person with intent to commit a felony therein, and the act of breaking and entering the house or
35 building of another, whether in the day or night time, with the intent to commit a felony therein; the act of entering or of breaking and entering the offices of the Government and public authorities, or the officers of banks, banking-houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein; perjury or the subornation of perjury; rape; arson; piracy by the law of nations; murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government; malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life, and who shall depart or flee, or who has departed or fled, from justice therein to the United States, or to any Territory thereof, or to the District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed. All the provisions of sections fifty-two hundred and seventy to fifty-two hundred and seventy-seven of this title, so far as applicable, shall govern
36 proceedings authorized by this proviso: Provided further, that such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

And provided further that no return or surrender shall be made of any person charged with the commission of an offense of a political nature.

If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such person a fair and impartial trial."

37 (Orig. endorsed:) Circuit court of the United States, southern district of N. Y. In the matter of the application of Charles F. W. Neely for a writ of *habeas corpus*, &c. Petition for writ. Nicoll, Anable & Lindsay, attorneys for petitioner, 31 Nassau street, New York. Due service of the within petition is hereby admitted this 10th day of August, 1900. Henry L. Burnett, U. S. att'y, attorney for U. S. Wm. Henkel, U. S. marshal, S. D. N. Y. U. S. circuit court. Filed Aug. 10, 1900. John A. Shields, clerk.

38 At a stated term of the circuit court of the United States of America in and for the southern district of New York, in the second circuit, held at the United States court and post-office building, in the borough of Manhattan of the city of New York, on the ninth day of August, in the year of our Lord one thousand nine hundred.

Present: Hon. William J. Wallace, circuit judge.

In the Matter of the Petition of CHARLES F. W. NEELY for a Writ of *Habeas Corpus*.

On reading and filing the petition of Charles F. W. Neely, verified the 9th day of August, 1900, for a writ of *habeas corpus*, directed to William Henkel, Esqr., United States marshal in and for the southern district of New York, requiring him to bring and have your petitioner before this court, together with the true cause of his detention of your petitioner, to the end that this court may act thereupon as of right and according to law ought to be done: now, after hearing John D. Lindsay, Esqr., of counsel for said petitioner, in support of said application, and due deliberation having been had, it is—

Ordered that such application be, and the same hereby is, in all things denied.

Enter.

WM. J. WALLACE,
Judge of the Circuit Court of the United States for the Southern District of New York.

39 (Orig. endorsed:) U. S. district court, southern district of New York. In the matter of the petition of Charles F. W. Neely for a writ of *habeas corpus*. Order denying application. Nicoll, Anable & Lindsay, attorneys for petitioner, 31 Nassau street, New York. Due service of a copy of the within order is hereby admitted this 10 day of August, 1900. Henry L. Burnett, U. S. att'y, attorney for U. S. Wm. Henkel, U. S. marshal, S. D. N. Y. U. S. circuit court. Filed Aug. 10, 1900. John A. Shields, clerk.

40 At a stated term of the circuit court of the United States in and for the southern district of New York, held at the United States courts and post-office building, in the borough of Manhattan of the city of New York, on the 9th day of August, 1900.

Present: Hon. William J. Wallace, circuit judge.

In the Matter of the Petition of CHARLES F. W. NEELY for a Writ of *Habeas Corpus*.

An appeal having been duly taken to the Supreme Court of the United States from an order entered herein the 9th day of August, 1900, denying the application of the petitioner for a writ of *habeas corpus*: now, on motion of Nicoll, Anable & Lindsay, attorney- and solicitors for the petitioner, it is—

Ordered that the said Charles F. W. Neely be remanded to the custody of a marshal of the United States for the southern district of New York, and be kept and detained in such custody pending and until the determination of the said appeal by the said Supreme Court of the United States and the further order of the court thereon.

Dated at the city of New York, the 9th day of August, 1900.

Enter.

WM. J. WALLACE,
Judge of the Circuit Court of the United States.

41 (Orig. endorsed:) Circuit court of the United States for the southern district of New York In the matter of the petition of Charles F. W. Neely for a writ of *habeas corpus*. Copy. Order remanding petitioner. Nicoll, Anable & Lindsay, attorneys for Chas. F. W. Neely, 31 Nassau street, New York. Due service of a copy of the within order is hereby admitted this 10th day of August, 1900. Henry L. Burnett, U. S. att'y, attorney for U. S. Wm. Henkel, U. S. marshall, S. D. N. Y. U. S. circuit court. Filed Aug. 10, 1900. John A. Shields, clerk.

42 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of CHARLES F. W. NEELY for a Writ of *Habeas Corpus*.

CHARLES F. W. NEELY, Appellant,
against
WILLIAM HENKEL, Appellee.

SIRS: Please take notice that Charles F. W. Neely, the petitioner above named, hereby appeals to the Supreme Court of the United States from the final order made and entered herein on the ninth day of August, 1900, denying his application for a writ of *habeas corpus*.

Dated New York, August 9th, 1900.

Yours, &c., NICOLL, ANABLE & LINDSAY,
Att'ys for Petitioner, 31 Nassau St., N. Y. City.

To Hon. Henry L. Burnett, United States district attorney for the southern district of New York; John A. Shields, Esquire, clerk of the circuit court of the United States in and for the southern district of New York; William Henkel, Esquire, United States marshal for the southern district of New York.

43 (Orig. endorsed:) Circuit court of the United States for the southern district of New York. In the matter of the petition of Charles F. W. Neely for a writ of *habeas corpus*. Copy. Notice of appeal. Nicoll, Anable & Lindsay, attorneys for petitioner, 31 Nassau street, New York. Due service of the within notice of appeal is hereby admitted this 10th day of August, 1900. Henry L. Burnett, U. S. att'y, attorney for U. S. Wm. Henkel, U. S. marshal, S. D. N. Y. U. S. circuit court. Filed Aug. 10, 1900. John A. Shields, clerk.

44 Circuit Court of the United States, Southern District of New York.

In the Matter of the Petition of CHARLES F. W. NEELY for a Writ of *Habeas Corpus*.

The petition of the above-named petitioner for an order allowing an appeal from the final order heretofore entered in this cause to the Supreme Court of the United States.

Charles F. W. Neely, the petitioner in the above-entitled cause, feeling himself aggrieved by the final order heretofore made and entered by this court in this cause on the ninth day of August, 1900, whereby it was ordered that his application for a writ of *habeas corpus*, directed to William Henkel, Esqr., United States marshal in and for the southern district of New York, requiring said marshal to bring and have your petitioner before this court, together with the true cause of his detention of your petitioner, be, and the same thereby was, denied, now comes, by Nicoll, Anable & Lindsay, Esqrs., his solicitors and counsel, and petitions this court for an order

45 allowing him, said petitioner, to prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made.

And your petitioner will ever pray.

CHARLES F. W. NEELY, *Petitioner*,
By JOHN D. LINDSAY, *His Attorney*.

NICOLL, ANABLE & LINDSAY,
Attorneys for Petitioner, 31 *Nassau Street, N. Y.*

COUNTY OF NEW YORK, } ss:
Southern District of New York, }

John D. Lindsay, being duly sworn, says he is the attorney for the petitioner above named; that the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged on information & belief, and that as to those matters he believes it to be true.

JNO. D. LINDSAY.

Sworn to before me this 9th day of August, 1900.

WM. J. WALLACE,
U. S. Circuit Judge.

The foregoing petition on appeal is granted and claim of appeal therein made is allowed. Undertaking fixed at $250.

Done in open court this 9th day of August, 1900.

WM. J. WALLACE,
Judge of the Circuit Court of the United States for the Southern District of New York.

46 (Orig. endorsed:) (Endorsed:) Circuit ct. of the U. S., southern dist. of New York. In the matter of the petition of Charles F. W. Neely for a writ of *habeas corpus*. Petition of appeal and allowance thereof. Nicoll, Anable & Lindsay, attorneys for Chas. F. W. Neely, 31 Nassau street, New York. Service of the within petition and order is hereby admitted this 10th day of August, 1890. Henry L. Burnett, U. S. att'y, attorney for U. S. Wm. Henkel, U. S. marshal, S. D. N. Y. U. S. circuit court. Filed Aug. 10, 1900. John A. Shields, clerk.

47 Supreme Court of the United States.

In the Matter of the Petition of CHARLES F. W. NEELY for a Writ of *Habeas Corpus*.

Know all men by these presents that we, Charles F. W. Neely, as principal, and The United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs and executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of August, one thousand nine hundred.

Whereas lately, at a circuit court of the United States in and for the southern district of New York, in a proceeding therein pending, an order was entered denying the application of the above-named petitioner for a writ of *habeas corpus*;

And the said petitioner having obtained an appeal and filed a copy thereof in the clerk's office of the said court to review said order:

48 Now, the condition of the above obligation is such that if the said petitioner, Charles F. W. Neely, shall prosecute said appeal to effect and shall answer all costs if he shall fail to make the said appeal good, then the above obligation to be void; else to remain in full force and effect.

CHARLES F. W. NEELY. [SEAL.]

Sealed and delivered in presence of—
EDWARD N. EMERSON,
As to Charles F. W. Neely.

[SEAL.] THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By SYLVESTER J. O'SULLIVAN, *Manager*.

Attest: WYLLYS BENEDICT, *Attorney-in-fact*.
(Stamp.)

49 STATE OF NEW YORK, } ss.:
County of New York, }

On this 9th day of August, 1900, before me personally appeared Charles F. W. Neely, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[SEAL.] EDWARD N. EMERSON,
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss.:
County of New York, }

On the 9th day of August, in the year 1900, before me personally came Sylvester J. O'Sullivan, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he was manager of the United States Fidelity and Guaranty Company, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3 of chapter 720 of the Session Laws of the State of New York for the Year 1893; and the said Sylvester J. O'Sullivan further said that he was acquainted with Wyllys Benedict and knew him to be the attorney-in-fact of said company; that the signature of said Wyllys Benedict subscribed to the within instrument is in the genuine handwriting of said Wyllys Benedict and was subscribed thereto by like order of the board of directors and in the presence of him, the said Sylvester J. O'Sullivan.

HOWARD McCLURE,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

At a regular meeting of the board of directors of the United States Fidelity and Guaranty Company, duly called and held on the second day of May, A. D. 1898, at the office of the company, city of Baltimore, State of Maryland, a quorum being present, on motion it was unanimously—

Resolved, That Andrew Freedman, vice-president, or Sylvester J. O'Sullivan, manager, or Harry C. Harden or Wyllys Benedict, attorneys-in-fact of this company in the State of New York, be, and they hereby are, and each one of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the faithfulness of persons holding positions of trust and the performance of contracts other than insurance policies and executing or guaranteeing bonds or undertakings required or permitted in all actions or proceedings at law, such bonds and undertakings, however, to be attested in every instance by one other of the persons above named, as occasion may require.

STATE OF NEW YORK, } ss.:
County of New York, }

I, Wyllys Benedict, attorney-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 9th day of August, 1900.

[SEAL.] WYLLYS BENEDICT,
Attorney-in-fact.

Statement of the United States Fidelity and Guaranty Company at the Close of Business June 30, A. D. 1899.

ASSETS.		LIABILITIES.	
Stocks and bonds (market value)	$1,178,917.08	Capital stock paid in cash.	$1,500,000.00
Loans secured by collaterals	338,681.25	Cash collateral deposit	43,902.93
Cash on hand and in banks.	311,450.90	Surplus and reserve	541,690.73
Loans secured by mortgage	37,275.10		
Real estate	65,346.66		
Advances on real estate secured by deeds	21,249.83		
Furniture and fixtures	100.00		
Agents' balances, less commissions	100,779.02		
Due for subscriptions for the dept. of guaranteed attorneys	15,535.98		
Interest due and accrued	16,257.84		
	$2,085,593.66		$2,085,593.66

STATE OF NEW YORK, } ss.:
County of New York, }

Wyllys Benedict, being duly sworn, says that he is the attorney-in-fact of the United States Fidelity and Guaranty Company, and that to the best of his knowledge and belief the foregoing is a true and correct statement of the financial condition of said company as of June 30th, 1899, and that the financial condition of said company is as favorable now as it was when such statement was made.

WYLLYS BENEDICT.

Subscribed and sworn to before me this 9th day of August, 1900.

[SEAL.] HOWARD McCLURE,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

50 (Orig. endorsed:) N. Y. supreme court. In the matter of the petition of Charles F. W. Neely for a writ of *habeas corpus.* Bond. I hereby approve the within bond, both as to form and

sufficiency. Dated August 10, 1900. Wm. J. Wallace, U. S. circuit judge. U. S. circuit court. Filed Aug. 11, 1900. John A. Shields, clerk.

51 *Assignment of Errors.*

In the Supreme Court of the United States.

In the Matter of the Petition of CHARLES F. W. NEELY for a Writ of *Habeas Corpus.*

Now comes the petitioner, Charles F. W. Neely, by John D. Lindsay, his counsel, in connection with his petition of appeal from the order of the circuit court of the United States in and for the southern district of New York, entered herein the ninth day of August, 1900, denying a writ of *habeas corpus* herein, and makes and files the following assignment of errors:

The court erred:

1. In denying the petitioner's application for a writ of *habeas corpus.*

2. In refusing to grant the said application.

3. In deciding that it appears from the petition itself that the relator is not entitled to such writ.

4. In holding that the petitioner is lawfully held in custody under the warrant of arrest issued under the act of Congress passed June 6th, 1900, entitled "An act amending section 5270 of the Revised Statutes of the United States."

5. In holding that the enactment of said act of Congress was a valid exercise of the legislative power vested in Congress by the Constitution of the United States.

6. In holding that the United States or the President of
52 the United States, or any officer, department, or branch of the United States Government, has authority under the Constitution of the United States to occupy or control the territory of a friendly foreign nation, or any part thereof, in time of peace, or to establish a military government therein, or to rule the same by martial law or otherwise.

7. In holding that the present government established by the President of the United States in the island of Cuba is warranted or sanctioned by the Constitution of the United States.

8. In holding that the President of the United States or the military authorities thereof, or any department of the United States Government, has authority under the Constitution of the United States to govern the island of Cuba or to interfere in any way or to any extent with the internal affairs of said island.

9. In holding that the President of the United States or the military authority thereof, or any other department of the United States Government, has authority under the Constitution of the United States to establish or enforce the judicial system now in operation in the island of Cuba or any executive, legislative, or judicial authority therein.

10. In holding that the courts established by the military government of the island of Cuba and now in operation there have any legal existence.

11. In holding that the so-called "postal code" of the island of Cuba has any legal force or effect.

12. In holding that American citizens may, under the provisions of the Constitution of the United States, be lawfully extra-
52a dited to Cuba for trial therein in the courts now existing in said island.

13. In holding that under the Constitution of the United States Congress may subject a citizen of the United States, not enlisted or commissioned in the military service of the United States Government or subject to the articles of war or the rules and regulations of the United States Army, to martial law in time of peace.

14. In holding that Congress has power under the Constitution of the United States to authorize the extradition of an American civilian citizen in time of peace to a country occupied by the United States and governed by martial law by the President, as the Commander-in-chief of the United States, in order that such citizen may be there tried by a tribunal created by the United States military authorities.

15. In holding that under the Constitution of the United States the island of Cuba or any part thereof is now or has been at any time lawfully occupied by or under the control of the United States.

16. In holding that there is any right or power in the authorities at present in control of the island of Cuba to secure to any person a fair and impartial trial in Cuba within the spirit and meaning of the United States Constitution.

17. In holding that under existing conditions a person extradited to Cuba can there secure or be accorded a fair and impartial trial within the spirit and meaning of the United States Constitution.

18. In holding that there was evidence before the circuit judge in the proceedings which resulted in the petitioner's commit-
53 ment, establishing or tending to establish that he was or had ever been guilty of a violation of any criminal law in force in Cuba by the commission of any one or more of the crimes specified in the said act of Congress.

By reason whereof the petitioner prays that the said order denying his application for a writ of *habeas corpus* be reversed, and that your petitioner be discharged from custody.

CHARLES F. W. NEELY, *Petitioner,*
By JOHN D. LINDSAY,
One of His Attorneys and of Counsel.

JOHN D. LINDSAY,
Counsel for Petitioner.

54 (Orig. endorsed:) Supreme Court of the United States. In the matter of the petition of Charles F. W. Neely for a writ of *habeas corpus.* Assignment of errors. Nicoll, Anable &

Lindsay, attorneys for Charles F. W. Neely, 31 Nassau street, New York. Service of the within assignment of errors is hereby admitted this 10 day of August, 1900. Rec'd Aug. 9, 1900. W. J. W. Henry L. Burnett, U. S. att'y, attorney for U. S. Wm. Henkel, U. S. marshal, S. D. N. Y. U. S. circuit court. Filed Aug. 10, 1900. John A. Shields, clerk.

55 By the Honorable William J. Wallace, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Hon. Henry L. Burnett, United States district attorney for the southern district of New York; William Henkel, United States marshal for the southern district of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, in the District of Columbia, on the 7th day of September, 1900, pursuant to a petition of appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Charles F. W. Neely is the appellant and you, the said marshal, are appellee, to show cause, if any there be, why the final order of the said circuit court in said petition of appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan, in the city of New York, in the district and circuit above mentioned, this 11th day of August, in the year of our Lord one thousand nine hundred.

WM. J. WALLACE,

Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

56 (Orig. endorsed:) United States circuit court. Charles F. W. Neely, appellant, against William Henkel, appellee. Citation. Nicoll, Anable & Lindsay, attorneys for appellant, 31 Nassau street, New York. Service of the within citation is hereby admitted this 13 day of August, 1900. Henry L. Burnett, U. S. attorney for S. D. N. Y. William Henkel, U. S. marshal, S. D. N. Y. U. S. circuit court. Filed Aug. 13, 1900. John A. Shields, clerk.

57 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to fifty-five (55), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled In the matter of the application of Charles F. W. Neely, by John D. Lindsay, his att'y, for a writ of *habeas corpus*, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court t
be hereunto affixed, at the city of New Yor
Seal of U. S. Circuit Court, South. Dist. New York.
in the southern district of New York, in th
second circuit, this fifteenth day of August, i
the year of our Lord one thousand nine hu
dred, and of the Independence of the sai
United States the one hundred and twenty-fifth.

JOHN A. SHIELDS, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Aug. 15, 1900.]

[Endorsed:] United States circuit court of appeals for the secon
circuit. —— —— *vs.* —— ——. Transcript of record from th
circuit court of the United States for the southern district of Ne
York.

Endorsed on cover: File No., 17,872. S. New York C. C. U. S
Term No., 387. Charles F. W. Neely, appellant, *vs.* William Henke
United States marshal for the southern district of New York. File
August 16, 1900.

30041